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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,879	04/05/2001	Daniel Patrick Connors	Y OR92000070	3754
21254 7590 03/03/2009 MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817				
EXAMINER				
SHEIKH, ASEAND M				
ART UNIT		PAPER NUMBER		
3627				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

09/825,879

Applicant(s)

CONNORS ET AL.

Examiner

Asfand M. Sheikh

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 21-26, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 21-26 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/12/2009 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1-13 and 21-26 and 29 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-13 and 21-26 and 29-30 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The examiner notes the

limitation of "wherein said predetermined condition comprises said shelf label holder detecting a wireless signal identifying said section of said shelf" is not supported by the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The examiner notes the specification relates to a shelf label holder control unit that detects the wireless signals, this differs greatly that the claimed shelf label holder. Therefore these claims stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Claims 1-13 and 21-26 and 29-30 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The examiner notes the limitation of "wherein said predetermined condition comprises said shelf label holder detecting a wireless signal identifying said section of said shelf" is not supported by the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The examiner notes the that the shelf label holder has way of obtaining a wireless signal, only the shelf label holder control unit. Therefore these claims stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 and 21-26 and 29-30 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The examiner is confused on how a "shelf label holder detecting a wireless signal identifying said section of said shelf". The examiner has interpreted a "shelf label holder" to be holder that holds labels? How can it no detect wireless signals? The examiner will interpret the claim as best understood (e.g. a processor attached to the label holder that can detect signals).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-13 and 21- 26 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swartzel et al. (US 6,552,663 B2) in view of Martin (US 5,575,100) and Johnson (US 6,624,757 B1) and Garber (US 7,044,373 B1).

Claims 1 and 13

Swartzel discloses a system for restocking and repricing merchandise (see at least, col. 3, lines 51-52: the examiner notes updating the display information (e.g. with price changes) and col. 9, lines 9-24: the examiner notes the LED (e.g. tag) display may change to flashing "here" to assist during stocking operations), comprising a shelf label identifying a section of the shelf (see at least, col. 3, lines 16-36 and FIG. 1: the examiner notes a front rail of a shelf has a plurality of display tags); a shelf label holder which holds said shelf label and comprises illuminating device including a plurality of illuminating sections (see at least, col. 3, lines 16-22: the examiner notes a plurality of LED (e.g. display tag) disposed along the front rails of display shelves and col. 9, lines 9-24: the examiner notes the LED (e.g. display tag) display may change to flashing "here" to assist during stocking operations) and a hand-held unit which remotely causes said illuminating device to illuminate said label (see at least, col. 9, lines 9-24: the examiner notes the LED (e.g. tag) display may change to flashing "here" to assist during

stocking operations), wherein said illuminating of said label corresponds respectively to a shelf location (see at least, col. 9, lines 9-24: the examiner notes the LED (e.g. tag) display may change to flashing "here" to assist during stocking operations).

Swartzel fails to disclose a shelf label including information printed on said label and a shelf label holder comprising a singular illuminating device with a plurality of illuminating sections and wherein said predetermined condition comprises said shelf label holder detecting a wireless signal identifying said section of said shelf.

However, Marvin discloses an electronic shelf label including information printed on said shelf label (see at least, col. 3, lines 4-11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Swartzel's illuminating shelf to include an electronic shelf label including information printed on said shelf label as taught by Johnson. One of ordinary skill in the art would have been motivated to combine the teachings in order to provide protective cover including an electronic display module for displaying price information having first and second sides and a front side and a display tag between the electronic display module and the protective cover for displaying information other than price, without obscuring the price information (see at least, Marvin, col. 1, lines 44-52).

Swartzel in view of Marvin fails to disclose a shelf label holder comprising a illuminating device with a plurality of illuminating sections and wherein said predetermined condition comprises said shelf label holder detecting a wireless signal identifying said section of said shelf.

However, Johnson discloses a shelf label holder comprising a illuminating device with a plurality of illuminating sections (see at least, col. 2, lines 28-30; and col. 3 line 54-col. 4, line 12: the examiner notes the display strip is an LED display with adjustable display sections and for example in FIG. 2C: the examiner notes the side view of a shelf with an attached display strip).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Swarzel in view of Martin's illuminating shelf with printed/electronic tags to include a shelf label holder comprising an illuminating device with a plurality of illuminating sections as taught by Johnson. One of ordinary skill in the art would have been motivated to combine the teachings in order to provide product information and price display device for a retail product shelves which does not have to be relocated as products are relocated within the store (see at least, Johnson, col. 1, lines 55-58).

However Garber discloses wherein said predetermined condition comprises said shelf label holder detecting a wireless signal identifying said section of said shelf (col. 18, lines 12-44 and col. 18, lines 56-20: the examiner portable RFID device interacts with a shelving processor in order to determine the correct option/location to shelf an item. Further the examiner notes after a RFID tag is scanned by a reader (detection of a wireless signal) and transmitted to a shelving processor a location while be illuminated (predetermined location) in which the item can be shelved).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Swarzel in view of Martin and Johnson's

illuminating shelf with printed/electronic tags with plurality of illuminating sections to include wherein said predetermined condition comprises said shelf label holder detecting a wireless signal identifying said section of said shelf as taught by Johnson. One of ordinary skill in the art would have been motivated to combine the teachings in order to provide a visual cue to aid in restocking an item in the correct location(see at least, Garber, col. 18, lines 12-44 and col. 18, lines 56-20).

Claim 2

Swartzel discloses further comprising: a host controller for storing merchandise data and planogram data (see at least, col. 7, line 65-col. 8, line 1: the examiner notes the system controller (TSC) contains a planogram which identifies position of each product within the store), processing said data and remotely controlling an operation of said hand-held unit and said shelf label holder (see at least, col. 3, line 37-43: the examiner notes the TSC controls LED (e.g. display tag) information and col. 5, lines 55-64: the examiner notes the TSC can communicate with a portable scanner/portable wireless terminal).

Claim 3

Swartzel discloses wherein a shelf control unit for controlling an illumination of said illuminating device (see at least, co. 9, lines 9-33: the examiner notes the TSC sends a signal for illumination of the illuminating device).

Swartzel in view of Martin fails to disclose a shelf label holder comprising a singular illuminating device with a plurality of illuminating sections.

However Johnson discloses a shelf label holder comprising a singular illuminating device with a plurality of illuminating sections (see at least, col. 3 line 54-col. 4, line 5: the examiner notes the display strip is an LED display with adjustable display sections and FIG. 2C: the examiner notes the side view of a shelf with an attached display strip).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Swartzel in view of Martin include a shelf label holder comprising a singular illuminating device with a plurality of illuminating sections as taught by Johnson. One of ordinary skill in the art would have been motivated to combine the teachings in order provide product information and price display device for retail product shelves which does not have to be relocated as products are relocated within the store (see at least, Johnson, col. 1, lines 55-58).

Claim 4

Swartzel discloses wherein an identifying section of said shelf label is inserted into said shelf control unit (see at least, col. 3, lines 36-54: the examiner notes the loop within the TSC would be range of control and include any identifying tag within the range of control for the TSC therefore this would be the inserted label into the shelf control unit).

Claim 5, 6, 7, and 9

Swartzel discloses wherein said shelf control unit comprises: a receptacle for receiving said identifying section of said shelf label see at least, col. 3, lines 36-54: the examiner notes the loop within the TSC would be range of control and include any identifying tag within the range of control for the TSC therefore this would be the inserted label into the shelf control unit); and a transceiver for transmitting signals to said host controller and said hand held unit and receiving signals from said host controller and said hand held unit (see at least, col. 9, lines 9-33: the examiner notes the communication back and forth between LED (e.g. display tag) tag, hand-held unit, and TSC for finding the location), a display device for displaying merchandise data and planogram data (see at least, col. 9, lines 33-32: the examiner notes a display on the hand-held device for merchandise/planogram data (see at least, col. 9, lines 58-65)), at least one of a bar code scanner and a keypad for inputting said data into said hand held unit (see at least, col. 9, lines 9-33: the examiner notes a UPC is scanned); and a memory for storing data (see at least, col. 5, lines 55-64: the examiner notes a portable wireless terminal would contain memory).

Claim 8

Swartzel discloses wherein said merchandise information comprises vendor information data and inventory data (see at least, col. 4, line, 64-col. 5, line 12: the examiner notes UPC description and general inventory information), and wherein said planogram data comprises correct merchandise shelf locations (see at least, col. 9, lines 9-67).

Claim 10

Swartzel discloses wherein said identifying section comprises at least one of a bar code, a radio frequency identification (RFID) tag and a magnetic identification tag (col. 9, line 9-33: the examiner notes the UPC would be a bar code).

Claim 11

Swartzel discloses wherein said illuminating section comprises at least one of a light-emitting diode, an organic light emitting diode, a liquid crystal display element, a plasma display element, an incandescent light bulb and a light pipe (see at least, col. 9, line 9-33).

Claim 12 and 28

Swartzel discloses wherein said signals comprise at least one of a radiowave signal (e.g. wireless) and infrared signal (see at least, col. 9, line 9-33: examiner notes RF is a radio wave).

Claim 21

Swartzel discloses wherein said illuminating device is formed along a longitudinal edge of said shelf label holder (see at least, FIG 1: "20").

Claim 22

Swartzel discloses wherein said illuminating device comprises a plurality of light-emitting diodes (LEDs) (see at least, col. 9, line 9-33).

Claim 23

Swartzel discloses wherein said shelf label holder is connected to one of an upper and lower surface of a shelf for displaying said items of merchandise (see at least, FIG. 1).

Claim 24, 25, and 26

Swartzel discloses wherein said locations on said shelf correspond respectively to items of merchandise, and wherein an illuminating section of said plurality of illuminating sections is individually illuminated to indicate a location on said shelf which corresponds to said illuminating section, for one of restocking and repricing of an item of merchandise which corresponds to said location on said shelf (see at least, col. 3, lines 51-52: the examiner notes updating the display information (e.g. with price changes) and col. 9, lines 9—67).

Swartzel in view of Martin fails to disclose a shelf label holder comprising a singular illuminating device with a plurality of illuminating sections.

However Johnson discloses a shelf label holder comprising a singular illuminating device with a plurality of illuminating sections (see at least, col. 3 line 54-col. 4, line 5: the examiner notes the display strip is an LED display with adjustable display

sections and FIG. 2C: the examiner notes the side view of a shelf with an attached display strip).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Swartzel in view of Martin to include a shelf label holder comprising a singular illuminating device with a plurality of illuminating sections as taught by Johnson. One of ordinary skill in the art would have been motivated to combine the teachings in order provide product information and price display device for retail product shelves which does not have to be relocated as products are relocated within the store (see at least, Johnson, col. 1, lines 55-58).

Claim 29

The examiner notes Claim 29 is rejected under similar grounds as noted for claims 11-13 and 21-26 and 28-29.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asfand M. Sheikh whose telephone number is (571)272-1466. The examiner can normally be reached on 9a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan M. Zeender can be reached on (571)272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Asfand M. Sheikh/
Examiner, Art Unit 3627
2/27/2009

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627